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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
O.O.C.J.

WRIT PETITION NO. 761 OF 2001

Manharlal C. Shah ... Petitioner

Versus

Commissioner of Income Tax and Ors. ... Respondents

Mr. Ramesh D. Dhanuka with Ms. A.R. Dhanuka for Petitioner.

Mr. A.S. Rao for Respondents.

CORAM: F.I. REBELLO &
R.V. MORE, JJ.
DATED: JULY 06, 2007

P.C.:

. Rule. Heard forthwith.

. On 24.11.1984 a search was conducted on the premisses of Respondent No. 3 by the Income Tax Department under Section 132 of the Income Tax Act, 1961. As respondent No. 3 could not explain fully the source of investment, a prohibitory order was issued and subsequently statement of Respondent No. 3 was recorded. On 19.3.1988, the 3rd Income Tax Officer, B-III Ward, the then Assessing Officer of Respondent No. 3 passed the assessment order in respect of assessment year 1985-86, holding that the imported goods belong to Respondent No. 3 and the deposits made in the Bank were made by her from her

income from undisclosed source. An appeal was preferred by Respondent No. 3. By order dated 25.1.1990 the Commissioner of Income Tax (Appeal) set aside the order dated 29.3.1988 and the matter was remanded back to the Income Tax Officer who passed a fresh assessment order. By order dated 30.10.1995 the Commissioner of Income Tax allowed the appeal filed by Respondent No. 3 directing Respondent No. 1, the Assessing Officer to make additions in the hands of the Petitioner on substantive basis and in the hands of Respondent No. 3 on protective basis. Against that order it appears respondent No. 2 as well as respondent No. 3 in the present petition has filed two separate appeals which are pending.

. Based on the order dated 30.10.1995 the Income Tax Officer assessed the Petitioner and completed assessment for the Petitioner for the assessment year 1985-86 and 1986-87 making additions on account of the alleged unexplained bank deposits as per order of the learned Commissioner of Income Tax (Appeals) on substantive basis and on Respondent No. 3 on protective basis. The Petitioner being aggrieved preferred appeal. The respondent No. 3 it appears on or about April, 1998 filed an affidavit before the Income Tax authorities alleging that she had given a General Power of Attorney in

favour of the Petitioner and had allowed the Petitioner to use her name as it was a havala transaction. Respondent No. 3 expressly disowned all such transactions done in her name. In the meantime, the Central Government announced Karvivad Samadhan Scheme. The Petitioner availed of the benefit of the said scheme and pursuant to that an order came to be passed in favour of the Petitioner under Section 90 of the Finance Act 2 of 1998. Petitioner accepted the ownership of the goods.

. In the meantime, the Custom Department auctioned the goods and after appropriating their dues against the sale proceeds, a sum of Rs.2,26,920/- was forwarded to the assessing Officer of Respondent No. 3.

. The present petition by the Petitioners is for a direction that the said amount be paid to him in view of the order passed in appeal directing that he be assessed on substantive basis and further as the Petitioner had accepted the ownership of the goods and the designated authority had issued certificate after adjudicating the tax liability, which the Petitioner paid under the scheme.

. On the other hand, on behalf of the Respondent authorities, their learned counsel submits that as

the appeal preferred by Respondent Nos. 2 and 3 is still pending, it is not possible to release the amounts in favour of the Petitioner herein.

. We have heard the learned counsel for the Petitioners as well as Respondent Nos. 1 and 2. None present for the Respondent No. 3. The learned counsel for the Petitioner has drawn our attention to the affidavit filed by Respondent No. 3 and more specifically to Para 10 dated 4th March, 1998 which reads as under :

> "I hereby expressly disown all such transactions allegedly done in my name. I have already submitted similar affidavits since 1992 in the course of my Income Tax assessment and other proceedings. Those affidavits also state these facts comprehensively and categorically."

. Our attention is also invited to section 91 of the Finance Act 2 of 1998 which reads as under :

> "91. Immunity from prosecution and imposition of penalty in certain cases :- The designated authority shall, subject to the conditions provided in section 90, grant

immunity from instituting any proceeding for prosecution for any offence under any direct tax enactment or indirect tax enactment, or from the imposition of penalty under any of such enactments, in respect of matters covered in the declaration under section 88."

. In our view, once the Petitioner has been assessed for the income pursuant to Kar Vivadh Samadhan Scheme 1988 and has paid the tax liability as assessed, merely because appeal was preferred by the Respondent No. 3 or for that matter, by Respondent No. 2 would be immaterial as those appeals at the highest on account of subsequent events would be purely academic in character. The Petitioner having been assessed for the goods which have been auctioned, in our opinion, on the sale of goods, the remainder of the amount which has been forwarded by respondent No. 3 has to be paid in favour of the Petitioner herein.

. The Petitioner however to file an undertaking before this court before the amount is released that in the event any adverse order is passed in the appeals filed either by respondent Nos. 2 and/or Respondent No. 3, the Petitioner will reimburse the said amount in favour of Respondent No. 2 and/or

Respondent No. 3 as the case may be. The undertaking to be filed before the amounts are released in favour of the Petitioner.

. The learned counsel points out that pursuant to interim order of this court, the amount was deposited in this court. In the light of that the Registry is directed on the Petitioner filing the undertaking before this court to release the invested amount along with interest thereon in favour of the Petitioner herein.

. In the light of that, we propose to dispose of the petition by issuing the following order :

. Rule made absolute in terms of Prayer Clause (b) without interest thereon and what has been earlier stated.

(R.V.MORE,J.) **(F.I. REBELLO,J.)**